

‘DUTY OF CONFIDENTIALITY’ TASK FORCE MEETS IN CAPITOL

A task force mandated by legislation enacted last year to carve a narrow exception to an attorney’s duty of confidentiality met at the State Capitol Friday, January 23, to begin the task of developing a clarifying rule of professional conduct.

The 21-member task force was appointed by State Bar President Anthony P. Capozzi pursuant to a provision of [AB 1101](#) by Assembly Member [Darrell Steinberg](#) (D-Sacramento), which was signed into law last October and will take effect on July 1 of this year. The measure authorizes an attorney to reveal confidential client information to the extent that the attorney reasonably believes disclosure is necessary to prevent a criminal act likely to result in death or substantial bodily harm to an individual.

California was the last of the 50 states to adopt such an exception.

The task force faces the narrow charge of developing an amendment to the rules of professional conduct to respond to certain key issues surrounding the bill:

- Whether an attorney has the duty to inform his or her clients of the limitation on the otherwise-absolute duty of confidentiality.
- Whether an attorney has an obligation to attempt to dissuade the client from performing the criminal act before making any revelation.
- Whether a decision to disclose creates a conflict of interest between attorney and client, and how such a conflict may be resolved.

Because of the July 1 effective date of the legislation, the task force is seeking to complete its deliberations by March, so that the proposed new rule (3-100) can be circulated for public comment, adopted by the State Bar’s Board of Governors (either as proposed or revised), and submitted to the Supreme Court for its consideration and possible adoption coincident with the new law.

MANDATORY HEALTH INSURANCE REFERENDUM BACK ON BALLOT

A state appeals court gave new life Thursday to a referendum on recently-enacted legislation to require California employers to provide health insurance for their staffs and their families. The measure will appear on the November 2004 election ballot.

Ruling in [Zaremborg v. Superior Court](#), A104920, a three-judge panel of the 1st District Court of Appeal overturned Sacramento Superior Court Judge Lloyd Connelly’s ruling that the attorney general’s title and summary of the referendum on [SB 2](#) by Senate President pro Tem [John Burton](#) (D-San Francisco) and Senator [Jackie Speier](#) (D-San Mateo) was misleading, and that the referendum petitions were otherwise flawed.

Although qualification of a referendum automatically stays the effectiveness of a law until it can be voted on by the people, the court’s decision will have no appreciable effect in this case because the mandates under SB 2 would not become operative until 2006.

FLURRY OF ACTIVITY AS LEGISLATIVE COUNSEL DEADLINE PASSES

As usual, the third floor Capitol offices of the Legislative Counsel were a beehive of activity Friday, as legislative staff descended upon the office with hundreds of requests to draft legislation.

The “Legislative Counsel Deadline” is the last day by which the office commits to having requests to draft legislation completed in time for the actual bills to be introduced by the “real” deadline of February 20 established by the Joint Rules of the Legislature.

Of course, since many (and probably most) members of the Legislature have not finalized their legislative programs by this point in the session, the tendency is to “cover the bases” by submitting to Legislative Counsel many drafting requests that will not, in fact, wind up introduced as bills. Many members also will extend the courtesy to aspiring sponsors of legislation of submitting their proposals to Counsel for drafting “unbacked” (i.e., without a lawmaker’s name on the bill), so that the sponsors can continue their search for an author with the assurance that the resulting bill can, indeed, be introduced by the February 20 deadline.

As a result, the attorneys of the Legislative Counsel’s office unfortunately are virtually guaranteed of spending a fair portion of the next month drafting legislation that will never see the light of day.

DEADLINES UPCOMING

- [January 31](#) - Last day for bills introduced in 2003 to be passed out of the house of origin.
- [February 20](#) – Last day to introduce bills.